

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1972 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Manoj Kumar Singh @ Manoj Singh son of late Bindeshwari Singh r/o. Khatrilane,
Hemampar, Adarsh Colony, P.S. Khajekalan, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Personnel And Administrative Department, Bihar, Patna
2. Soni Lal @ Shashi Bhushan Yadav son of late Shaligram Prasad, R/o. Rai Jai Krishna Road Gurhatta, P.S. Khajekalan, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rudal Singh, Advocate

For the Respondent/s : Md. Nadim Seraj, GP-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 06-11-2017

Heard learned counsel for the parties.

2. The petitioner is an accused in connection with Sessions Trial No.700 of 2013, arising out of Khajekalan P.S. Case No.137 of 2012.

3. When the trial was going on at the stage of defence evidence, the petitioner filed two petitions. One was under Section 91 of the Cr.P.C. to call for inquiry report of Sachidanand Paswan, an injured of the alleged occurrence, who was said to be treated in the Nalanda Medical College and Hospital. Another petition was to examine Sachidanand Paswan as a Court witness under Section 311 Cr.P.C. Both the petitions were rejected on 12.09.2017 by learned Additional Sessions Judge-IV, Patna City. The said order has been



challenged in this writ application.

4. The learned trial judge has observed, while rejecting the prayer of the petitioner, that Sachidanand Paswan though is said to be an injured, during the course of occurrence his statement was recorded by the police during investigation in para-38 of the case diary wherein he stated that the firing came from behind his back, hence, he could not identify the assailant. Therefore, according to the learned trial Court his evidence was not essential to the just decision of the case. Moreover, the learned trial Judge allowed opportunity to the petitioner to produce the said witness as a defence witness, if so advised.

5. The law is well settled that the prosecution cannot be compelled to produce each and every witness cited as prosecution witness. The effect of non-examination/non-production of important evidence and its impact on the trial is already there. Moreover, I do not find that the learned trial Judge had erroneously exercised jurisdiction in view of the provisions of Section 311 Cr.P.C.

6. I further find substance in the finding of the learned trial Judge that injury of witness Sachidanand Paswan is not an issue in the case; rather murder of some other person was the point to be decided. The Court-below further observed that the injury report was not procured and attached by the I.O. at the time of submission of the



charge sheet. Hence, that was not essential to prove the prosecution case or the defence version. Moreover, the defence has opportunity to bring that evidence also if so advised.

7. Learned counsel for the petitioner submits that the learned trial Judge ignored the requirement of Section 311 Cr.P.C. which mandates to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. This Court cannot substitute its decision as appellate Court on the finding of the learned trial Judge on the aforesaid issue.

8. Therefore, there is no merit in the submission aforesaid. Accordingly, this writ application stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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